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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/695,686

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Margaret Aleles

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27777 7590 11/24/2009  
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EXAMINER

PORTER, RACHEL L

ART UNIT

PAPER NUMBER

3626

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/695,686	<b>Applicant(s)</b> ALELES ET AL.	
	<b>Examiner</b> RACHEL L. PORTER	<b>Art Unit</b> 3626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 August 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. This communication is in response to the application filed 8/4/09. Claims 1-14 are pending.

#### ***Specification***

2. The attempt to incorporate subject matter into this application by reference to the provisional applications 60/422,724 and 60/482,443 is ineffective. In accordance with MPEP 608.01(p), such a claim for incorporation by reference under 119(e) must have been done at the time of filing of the instant application.

3. The amendment filed 3/24/04 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is the following language "both of which are hereby incorporated herein by reference for all purposes." Applicant is required to cancel the new matter in the reply to this Office Action.

#### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. Claims 1-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peyrelevade et al US (2003/0065636A1) in view of Giachetti et al (US 2003/0120534 A1)

[claim 1] Peyrelevade discloses a method of providing an individualized hair care program to a customer, the method comprising:

- a) entering personal information from a customer into a computer; (Figure 1A (100)) in a first retail location that is one of a plurality of retail locations in data communication with one another. (Figure 4, 51-52, 56 143—exemplary network includes one or more merchant nodes)
- b) using the personal information to create an individualized hair care program for the customer (Figure 1A, par. 38, 40);
- c) providing the individualized hair care program to the customer at a first retail location (par. 94-95;--user can buy the products immediately or the system can store the order; 148—merchant can provide the information electronically), wherein the individualized hair care program comprises at least two elements selected from the group consisting of a recommendation for at least one hair care product, a recommendation for at least one hair care activity, and a recommendation for at least one hair care service; (Figure 17; par. 67, 90-93, 152-154) and wherein selecting the elements for the for the individualized hair program is performed by a computer (par. 65-66—AI engine selects recommendations)

Claim 1 has been amended to recite: “using the personal information to generate scores according to predetermined criteria to create an individualized hair care program

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for the customer comprising at least two elements selected from the group consisting of a recommendation for at least one hair care product, a recommendation for at least one hair care activity, and a recommendation for at least one hair care service, wherein the selection is based on the scores derived from the personal information” and further recites “wherein at least one of the steps of generating scores according to predetermined criteria and selecting elements of the individualized hair care program is performed by a computer.”

Peyrelevade discloses a method for providing an individualized hair care program as cited above. Peyrelevade further discloses a method wherein selecting the elements for the individualized hair program is performed by a computer (par. 65-66—AI engine selects recommendations) However, Peyrelevade does not disclose a method wherein scores are generated based on personal information to assist in making or providing a recommended program.

Giachetti discloses a method wherein personal information gathered from the consumer, including lifestyle habits, activities and personal preferences (pars. 27-30) is used to generate a score according to predetermined criteria (e.g. affinity index) to create personalized recommendations. (par. 30-31, figure 3; par 36-37) The recommendations include at least two of one hair care activity, a hair care product or a recommendation for service (par.39, par. 94—hair coloring, treatment, other products, hair styling). At the time of the Applicant's invention, it would have been obvious to one of ordinary skill in the art to modify the method of Peyrelevade with the teaching of Giachetti to include the use of scores (e.g. affinity index) based upon user information to

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help generate a personalized recommendation list or program for a consumer. As suggested by Giachetti one would have been motivated to include this feature to provide an indicator to permit the consumer to better assess his/her compatibility with multiple products on a predictable basis (par. 9, 12)

[claim 2] Peyrelevade discloses the method of claim 1 wherein data comprising the personal information is communicated from the first retail location to a second retail location. (Figure 4, par. 51, merchant nodes may access user profile info. via the network)

[claim 3] Peyrelevade discloses the method of claim 1 wherein data comprising the individualized hair care program is communicated from the first retail location to a second retail location.(Figure 4, par. 51 multiple merchant nodes in communication via the network; par. 56-- merchants may also provide the user with an option to affirmatively seek a recommendation of one or more products)

[claim 4] Peyrelevade discloses the method of claim 1 wherein data comprising the personal information and the individualized hair care program are communicated from the first retail location to a second retail location. . (Figure 4, par. 51 multiple merchant nodes in communication via the network; par. 56-- merchants may also provide the user with an option to affirmatively seek a recommendation of one or more products)

[claim 5] Peyrelevade discloses the method of claim 4 wherein the data comprising the personal information and the individualized hair care program are communicated from the first retail location to the second retail location at the customer's direction. (par. 54--

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user profile database 430 may be kept separate, for privacy purposes is user desires)

[claim 6]        Peyrelevade discloses a method of providing an individualized hair care program to a customer in a retail shopping environment, the method comprising, in a retail shopping environment:

a)        entering personal information comprising objective information from a customer;

(Figure 1A) in a first retail location that is one of a plurality of retail locations in data communication with one another. (Figure 4, 51-52, 56 143—exemplary network includes one or more merchant nodes)

b)        using the personal information to generate individualized hair care needs for the customer; (Figure 1A, par. 38, 40);

(c) evaluating the individualized hair care needs against standards that reflect needs for hair care products, needs for hair care services, and needs for hair care activities, to create an individualized hair care needs assessment; (Figures 6-7; par.66- 67—AI engine may recommend products complementary to those already selected by the user)

d) using the individualized hair care needs assessment to create an individualized hair care program, the individualized hair care program comprising at least one element selected from the group consisting of a hair care product, a hair care service, and a hair care activity; (Figure 7; par 65) and

e) providing the individualized hair care program to the customer(par. 67, 90-93) in the first retail location (par. 94-95;--user can buy the products immediately or the system can store the order; 148—merchant can provide the information electronically).

Claim 6 has been amended to recite: using the personal information to generate scores according to predetermined criteria to create an individualized hair care program for the customer and further recites " wherein at least one of the steps of generating scores according to predetermined criteria and evaluating the individualized hair care needs and creating an individualized hair care program is performed by a computer."

Peyrelevade discloses a method for providing an individualized hair care program as cited above. Peyrelevade further discloses a method wherein selecting the elements for the individualized hair program is performed by a computer (par. 65-67—AI engine selects recommendations). However, Peyrelevade does not disclose a method wherein scores are generated based on consumer personal information to assist in making or providing a recommended program.

Giachetti discloses a method wherein personal information gathered from the consumer, including lifestyle habits, activities and personal preferences (pars. 27-30) is used to generate a score according to predetermined criteria (e.g. affinity index) to create personalized recommendations. (par. 30-31, figure 3; par 36-37) The recommendations include one hair care activity, a hair care product or a recommendation for service (par.39, par. 94—hair coloring, treatment, other products, hair styling).

At the time of the Applicant's invention, it would have been obvious to one of ordinary skill in the art to modify the method of Peyrelevade with the teaching of Giachetti to include the use of scores (e.g. affinity index) based upon user information to help generate a personalized recommendation list or program for a consumer. As



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suggested by Giachetti one would have been motivated to include this feature to provide an indicator to permit the consumer to better assess his/her compatibility with multiple products on a predictable basis (par. 9, 12)

[claim 7]      Peyrelevade discloses a method of providing a personalized hair care program to a customer in a retail shopping environment, the method comprising:

a) entering personal information comprising objective information from a customer;

(Figure 1A) in a first retail location that is one of a plurality of retail locations in data communication with one another. (Figure 4, 51-52, 56 143—exemplary network includes one or more merchant nodes)

b) using the personal information to create a personalized hair care program for the customer (Figure 1A, par. 38, 40);

c)      providing the individualized hair care program to the customer at a first retail location (par. 94-95;--user can buy the products immediately or the system can store the order; 148—merchant can provide the information electronically), wherein the individualized hair care program comprises at least two elements selected from the group consisting of a recommendation for at least one hair care product, a recommendation for at least one hair care activity, and a recommendation for at least one hair care service; (Figure 17; par. 67, 90-93, 152-154) and wherein selecting the elements for the for the individualized hair program is performed by a computer (par. 65-66—AI engine selects recommendations)

Claim 7 has been amended to recite: “using the personal information to generate

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scores according to predetermined criteria to create an individualized hair care program for the customer comprising at least two elements selected from the group consisting of a recommendation for at least one hair care product, a recommendation for at least one hair care activity, and a recommendation for at least one hair care service, wherein the selection is based on the scores derived from the personal information” and further recites “wherein at least one of the steps of generating scores according to predetermined criteria and selecting elements of the individualized hair care program is performed by a computer.”

Peyrelevade discloses a method for providing an individualized hair care program as cited above. Peyrelevade further discloses a method wherein selecting the elements for the individualized hair program is performed by a computer (par. 65-66—AI engine selects recommendations) However, Peyrelevade does not disclose a method wherein scores are generated based on personal information to assist in making or providing a recommended program.

Giachetti discloses a method wherein personal information gathered from the consumer, including lifestyle habits, activities and personal preferences (pars. 27-30) is used to generate a score according to predetermined criteria (e.g. affinity index) to create personalized recommendations. (par. 30-31, figure 3; par 36-37) The recommendations include at least two of one hair care activity, a hair care product or a recommendation for service (par.39, par. 94—hair coloring, treatment, other products, hair styling). At the time of the Applicant's invention, it would have been obvious to one of ordinary skill in the art to modify the method of Peyrelevade with the teaching of

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Giachetti to include the use of scores (e.g. affinity index) based upon user information to help generate a personalized recommendation list or program for a consumer. As suggested by Giachetti one would have been motivated to include this feature to provide an indicator to permit the consumer to better assess his/her compatibility with multiple products on a predictable basis (par. 9, 12)

[claim 8] Peyrelevade discloses the method of claim 7 wherein the personal information is retained with a personal identifier unique to the customer. (Figure 16: user profile with name)

[claim 9] Peyrelevade discloses the method of claim 7 wherein the personal information comprises subjective information. (Figure 16: e.g. preferred brands)

[claims 10-12] Peyrelevade discloses a method of claim 9 wherein the subjective personal information is obtained from the customer by questioning means, including an interview or a written questionnaire. (Figure 16)

[claim 13] Peyrelevade discloses the method of claim of claim 7 wherein the hair care activity is an educational seminar. (par. 152-154)

[claim 14] Peyrelevade discloses the method of claim 7 wherein the hair care activity is a recommendation for the customer to be examined by a dermatologist. (par. 152-154—e.g. skin care professional)

### ***Response to Arguments***

6. Applicant's arguments with respect to claims 1-15 have been considered, but are not persuasive.

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(A) Regarding applicant's arguments drawn toward the amended features of the claims, in particular claims 1, 6, and 7, a new reference has been added to address the additional limitations.

(B) Applicant argues that the Peyrelevade reference does not disclose a hair care regimen.

In response, the recited "hair care regimen" includes a recommendation comprising at least two of the following: a product, an activity or a recommendation of hair service, based upon the user's data. Beauty products, activities or service recommendations as encompassed by the method disclosed by Peyrelevade include hair coloring, hair cutting, hair styling, products include shampoos, conditioners, hair straighteners and curlers (par. 152-154). It is disclosed that the AI engine provides information on make-up and also the hair care that goes along with it (par. 66-67).

### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Matsumoto et al (US 7, 392,204)

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to RACHEL L. PORTER whose telephone number is (571)272-6775. The examiner can normally be reached on M-F, 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, (Christopher) Luke Gilligan can be reached on (571) 272-6770. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/R. L. P./  
Examiner, Art Unit 3626

/C. Luke Gilligan/  
Supervisory Patent Examiner, Art Unit 3626